

RESOLUTION NO. 37-2005

A RESOLUTION AUTHORIZING PARTICIPATION IN LIMITED TAX PENSION BONDS, SERIES 2005.

WHEREAS, the City is authorized by ORS 238.692 to 238.698 (the "Act") to issue limited tax bonds as defined in ORS 288.150 to finance its pension liability; and,

WHEREAS, the Act and ORS 288.150 permit the City to pledge its full faith and credit and taxing power within the limitations of Sections 11 and 11b of Article XI of the Oregon Constitution to pay those bonds; and,

WHEREAS, Section 2 of ORS 238.694 of the Act provides "Notwithstanding any limitation on indebtedness or borrowing under state or local law, for the purpose of obtaining funds to pay the pension liability of a governmental unit, the governing body of a governmental unit may authorize and cause the issuance of limited tax bonds as defined in ORS 288.150..." and the Act therefore supersedes any state or local debt limitations of the City; and,

WHEREAS, the City has an unfunded pension liability to the Oregon Public Employees Retirement System ("OPERS") which was estimated to be \$3,268,237 as of December 31, 2003; and,

WHEREAS, OPERS currently requires the City to pay this unfunded liability over a period of years with interest at eight percent per annum; and,

WHEREAS, current interest rates in the bond market create the opportunity for the City to finance its unfunded pension liability and potentially reduce its costs; and,

WHEREAS, a pooled pension bond program ("Program") may reduce costs for participating governments; and,

WHEREAS, the Program does not require the City to pay any portion of another government's pension bonds or liabilities to OPERS; now therefore,

THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON RESOLVES:

Section 1. Definitions.

Unless the context clearly requires otherwise, the following terms shall have the following meanings:

"Additional Charges" means the fees and other charges of the Program Trustee, as defined in the Program Trust Agreement and any indemnity payments due under Section 6(3) of this Resolution.

"Available General Funds" means: (i) all the City's ad valorem property tax revenues received from levies under its permanent rate limit; and (ii) all other unrestricted taxes, fees, charges,

revenues and receipts of the City which Oregon law allows to be spent to make the Bond Payments.

“Bond Payments” means the principal and interest payments due under the Bond.

“Bond” means the City’s Limited Tax Pension Bond, Series 2005, that is authorized by Section 2 of this Resolution.

“Business Day” means any day except a Saturday, a Sunday, a legal holiday, a day on which the offices of banks in Oregon or New York are authorized or required by law or executive order to remain closed, or a day on which the New York Stock Exchange or the Program Trustee is closed.

“City Official” means the City Manager of the City, or the person designated by the City Manager to act as City Official under this Resolution.

“City” means the City of Milwaukie, Oregon.

“Event of Default” refers to an Event of Default listed in Section 8(1) of this Resolution.

“Government Obligations” means direct noncallable obligations of the United States, or obligations the principal of and interest on which are fully and unconditionally guaranteed by the United States, or any other security which the Program Trust Agreement allows to be used as a defeasance obligation.

“Payment Date” means a date on which Bond principal or interest is due, whether at maturity or prior redemption.

“Program” means the pooled pension bond program implemented through the Program Trust Agreement.

“Program Obligations” means the obligations issued by the Program Trustee under the Program Trust Agreement which are payable from the Bond Payments and similar pension bond payments made by other participants in the pension bond program.

“Program Trust Agreement” means the Trust Agreement between the Program Trustee, the City and other issuers of pension bonds which are sold to the Program Trustee, in which the Program Trustee agrees to hold the Bond and to distribute the Bond Payments to the owners of Program Obligations.

“Program Trustee” means Wells Fargo Bank, National Association, as trustee under the Program Trust Agreement, or its successors.

“Resolution” means this Resolution, including any amendments made in accordance with Section 7 of this Resolution.

“Security Payments” means the payments the City is required to make on the 15th day of the month which precedes each Payment Date. The Security Payments are equal to the amount required to be paid on that Payment Date.

Section 2. Bond Authorized.

- (1) The City hereby authorizes the issuance, sale and delivery of its Limited Tax Pension Bond, Series 2005, in accordance with this Resolution and in an amount which is sufficient to produce net proceeds which do not exceed the most recent estimate of the City’s unfunded pension liability to OPERS which the City receives from OPERS prior to selling the Bond, plus the costs of issuing and selling the Bond, obtaining credit enhancement, paying the City’s share of any costs of the Program Trustee and any other costs of participating in the Program, and paying any interest on the Bond subject to Section 2(3) herein.
- (2) The issuance of the Bond and the participation in the Program shall not obligate the City to pay any portion of another government’s pension bonds or liabilities to OPERS.
- (3) Bond proceeds shall be used to pay the City’s unfunded pension liability to OPERS, to pay interest on the Bond for a period not to exceed three years and to pay costs of issuing and selling the Bond, including any costs of the Program Trustee and credit enhancement.
- (4) The Bond shall be a “federally taxable bond” which bears interest that is not excludable from gross income under Section 103(a) of the Internal Revenue Code of 1986, as amended. Interest shall, however, be exempt from Oregon personal income taxation.
- (5) OPERS currently requires the City to pay this unfunded liability over a period of years. OPERS charges the City eight percent per annum because OPERS expects, over the long term, to earn eight percent on its investments. Refinancing that liability at a lower rate of interest should, therefore, reduce costs for the City. To ensure that the rate of interest on the Bond will be less than the rate of interest which OPERS expects to earn, the Bond shall not be sold at a true interest cost of more than 6.50% per annum.

Section 3. Delegation.

If the City Official determines that the City shall issue the Bond, the City Official is hereby directed, on behalf of the City and without further action by the Council, to:

- (1) Participate in the preparation of, authorize the distribution of, and deem final any official statement or other disclosure documents relating to the Bond or the Program Obligations.
- (2) Establish the final principal amounts, maturity schedules, interest rates, sale prices and discount, redemption terms, payment terms and dates, Security Payment terms, and other terms of the Bond.

- (3) Negotiate the terms of, and enter into a bond purchase agreement, which provides for the acquisition of the Bond by the Program Trustee.
- (4) Approve and execute and deliver an intergovernmental agreement and the Program Trust Agreement, or an intergovernmental agreement which is combined with the Program Trust Agreement, which directs the Program Trustee to issue the Program Obligations and provides for the administration of funds held by the Program Trustee, and any other agreements or documents which may be required for participation in the Program. However, delivery of the Bond to the Program Trustee shall constitute execution of the Program Trust Agreement by the City, and the City shall be bound by the Program Trust Agreement upon delivery of the Bond to the Program Trustee.
- (5) Undertake to provide continuing disclosure for the Bond in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission.
- (6) Apply for ratings on the Bond or the Program Obligations and purchase municipal bond insurance or obtain other forms of credit enhancements for the Bond or the Program Obligations, enter into agreements with the providers of credit enhancement, and execute and deliver related documents.
- (7) Execute and deliver the Bond to the Program Trustee.
- (8) Negotiate the terms of, and enter into guaranteed investment contracts or other agreements for the investment of capitalized interest, if any.
- (9) Execute and deliver any agreements or certificates and take any other action in connection with the Bond which the City Official finds is desirable to permit the sale and issuance of the Bond in accordance with this Resolution.

Section 4. Security for Bond.

- (1) The City hereby pledges its full faith and credit and taxing power within the limitations of Sections 11 and 11b of Article XI of the Oregon Constitution to pay the Bond. The Bond shall be a limited tax bond of the City as defined in ORS 288.150, and the City shall pay the Bond from its Available General Funds. The City is not authorized to levy additional taxes to pay the Bond.
- (2) To secure the payment of the Bond, the City shall make the Security Payments as provided in the Bond. The Security Payments shall be applied to make Bond Payments.
- (3) This Resolution shall constitute a contract with the Trustee, and the owners of the Program Obligations shall be third-party beneficiaries of this contract.

Section 5. Redemption.

The principal component of Bond Payments shall be subject to redemption on the dates and at the prices established by the City Official pursuant to Section 3(2) and in accordance with the Program Trust Agreement.

Section 6. Covenants.

The City hereby covenants and agrees with the owner of the Bond as follows:

- (1) The City shall promptly cause Security Payments and the principal, premium, if any, and interest on the Bond to be paid as they become due in accordance with the provisions of this Resolution and the Bond.
- (2) The City covenants for the benefit of the Program Trustee to pay the Additional Charges reasonably allocated to it by the Program Trustee, in accordance with the invoices for such Additional Charges which are provided by the Program Trustee pursuant to the Program Trust Agreement.
- (3) To the extent permitted by law, the City covenants and agrees to indemnify and save the Program Trustee harmless against any loss, expense or liability which is reasonably allocable to the City and which the Program Trustee may incur arising out of or in the exercise or performance of its duties and powers under the Program Trust Agreement relating to the Bond, including the costs and expenses of defending against any claim or liability, or enforcing any of the rights or remedies granted to it under the terms of the Program Trust Agreement in connection with the Bond, excluding any losses or expenses which are due to the Trustee's breach of fiduciary duties, negligence or willful misconduct. The obligations of the City under this Section 6(3) shall survive the resignation or removal of the Program Trustee under the Program Trust Agreement and the payment of the Program Obligations and discharge under the Program Trust Agreement. The damages claimed against the City shall not exceed the damages which may be allowed under the Oregon Tort Claims Act, Oregon Revised Statutes Section 30.260, et seq., unless the provisions and limitations of such act are preempted by federal law, including, but not limited to the federal securities laws.

Section 7. Amendment of Resolution.

The City may amend this Resolution only in accordance with the Program Trust Agreement.

Section 8. Default and Remedies.

- (1) The occurrence of one or more of the following shall constitute an Event of Default under this Resolution:

- (A) Failure by the City to pay Bond principal, interest or premium when due (whether at maturity, or upon redemption after principal components of Bond Payments have been properly called for redemption);
 - (B) Failure by the City to make any Security Payment within five Business Days after it is due;
 - (C) Failure by the City to observe and perform any covenant, condition or agreement which this Resolution requires the City to observe or perform for the benefit of the Program Trustee, other than as set forth in Section 8(1)(A) or 8(1)(B), which failure continues for a period of 60 days after written notice to the City by the Program Trustee specifying such failure and requesting that it be remedied; provided however, that if the failure stated in the notice cannot be corrected within such 60 day period, it shall not constitute an Event of Default so long as corrective action is instituted by the City within the 60 day period and diligently pursued, and the default is corrected as promptly as practicable after the written notice referred to in this Section 8(1)(C); or,
 - (D) The City is adjudged insolvent by a court of competent jurisdiction, admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, or consents to the appointment of a receiver for the installment payments.
- (2) The Program Trustee may waive any Event of Default and its consequences, except an Event of Default described in Section 8(1)(A).
 - (3) If an Event of Default occurs and is continuing the Program Trustee may exercise any remedy available at law or in equity; however, the Bond Payments shall not be subject to acceleration.
 - (4) No remedy in this Resolution conferred upon or reserved to the Program Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Resolution or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle the Program Trustee to exercise any remedy reserved to it, it shall not be necessary to give any notice other than such notice as may be required by this Resolution or by law.

Section 9. Defeasance.

The City may defease all or any portion of the Bond Payments in accordance with the Program Trust Agreement.

Section 10. Form.

The Bond shall be issued as a single installment bond in substantially the form attached hereto as Exhibit A, with such changes as may be approved by the City Official. The Bond shall be executed on behalf of the City with the manual signature of the City Official.

Section 11. Rules of Construction.

In determining the meaning of provisions of this Resolution, the following rules shall apply unless the context clearly requires application of a different meaning:

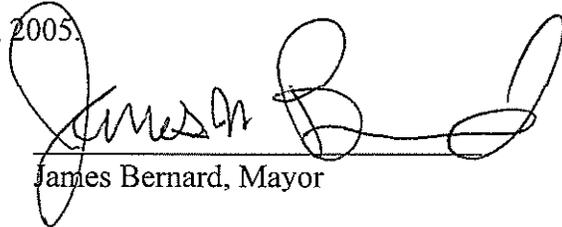
- (1) References to section numbers shall be construed as references to sections of this Resolution.
- (2) References to one gender shall include all genders.
- (3) References to the singular shall include the plural, and references to the plural shall include the singular.

Section 12. Effective Date.

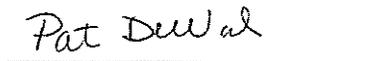
This resolution shall take effect on the date of its passage by the City Council.

Introduced and adopted by the City Council on July 19, 2005.

This resolution is effective on 07/19/05, 2005.


James Bernard, Mayor

ATTEST:


Pat DuVal, City Recorder

APPROVED AS TO FORM:
Ramis, Crew & Corrigan, LLP


City Attorney

Exhibit A

Form of Bond

No. R-«BondNumber»

\$«PrincipalAmtNumber»

United States of America
State of Oregon
County of Clackamas
City of Milwaukie
Limited Tax Pension Bond
Series 2005

Dated Date: _____

Registered Owner: ----WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee----

Principal Amount: ----\$«PrincipalAmtSpelled» Dollars----

The City of Milwaukie, Oregon (the "City"), for value received, acknowledges itself indebted and hereby promises to pay to the registered owner, which is WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee (the "Program Trustee") under the Trust Agreement among the Program Trustee and the issuers of pension bonds which is dated as of ____, 2005 (the "Program Trust Agreement"), the Principal Amount indicated above, in installments as provided in Exhibits A and B attached hereto, together with interest thereon as provided below, computed on the basis of a 360-day year of twelve 30-day months.

To provide additional security, the City covenants to make payments (the "Security Payments") to the Program Trustee on the dates and in the amounts shown in Exhibit C attached hereto.

Each Security Payment shall be credited against the Bond principal and interest payment which is due on the first day following that Security Payment.

This Bond is the City's Limited Tax Pension Bond, Series 2005 (the "Bond"). This Bond is issued for the purpose of financing the City's pension liability to the Oregon Public Employees Retirement System. This Bond is authorized and issued under City Resolution No. __ (the "Resolution") and ORS 238.692 to 238.698 and ORS 288.150, in full and strict accordance and compliance with all of the provisions of the Constitution and Statutes of the State of Oregon and the Charter of the City. Capitalized terms used in this Bond have the meanings defined for such terms in the Resolution.

This Bond is issued in conjunction with and subject to the terms and conditions of the Program Trust Agreement. The City's obligations under this Bond, the Program Trust Agreement and the Program are limited to paying the principal, interest and any premium on this Bond by making the Security Payments, and to paying the Additional Charges. The issuance of this Bond and the participation by the City in the Program shall not obligate the City to pay any portion of another government's pension bonds or liabilities to OPERS.

This Bond is a legal, valid and binding limited tax bond of the City which is enforceable against the City in accordance with its terms. The City's full faith and credit and taxing power within the limitations of Sections 11 and 11b of Article XI of the Oregon Constitution are pledged for the punctual payment of the principal of and interest on this Bond. The City has covenanted to pay this Bond from its "Available General Funds" as defined in the Resolution. The City is not authorized to levy any additional taxes to pay this Bond. This Bond does not constitute a debt or indebtedness of Clackamas County, the State of Oregon, or any political subdivision thereof other than the City.

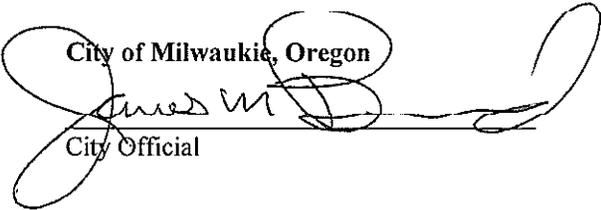
The principal components of the Bond Payments are subject to redemption [insert redemption provisions].

[insert redemption procedure]

The Bond may not be transferred to any person other than a successor Program Trustee.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and things required to exist, to happen, and to be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form, and manner as required by the Constitution and Statutes of the State of Oregon and the charter of the City and that the issue of which this Bond is a part, and all other obligations of the City, are within every debt limitation and other limit prescribed by such Constitution and Statutes and City Charter.

IN WITNESS WHEREOF, the City Council of City of Milwaukie, Oregon, by Resolution duly passed, has caused this Bond to be signed by the manual signature of its City Official, all as of the date first above written.

City of Milwaukie, Oregon

City Official